



LAKES MANAGEMENT ADVISORY COMMITTEE

NH Lakes Management and Protection Program

New Hampshire Department of Environmental Services
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MINUTES

March 24, 2006 Meeting

DES Conference Room

9:30 a.m. - 1:00 p.m.

Members present:

Jim Haney, Ph.D., Chair
Joanna Pellerin, Vice Chair
Wendell Berry
Joe Farrelly, telephonically
Ken Gallagher
Mark Gallagher
Mark Hemmerlein
Ken Jordan
Marsha LaVallee Huntoon
James S. Morash
Fred Murphy
Larry Sunderland
Rich Tichko

Representing:

Scientific Community, UNH
State Conservation Committee
NH Business and Industry Assn
NH Lakes Association
Office of Energy and Planning
Commissioner, DOS
Commissioner, DOT
NH Association of Realtors
Conservation Commissions
Tourism, NH Travel Council
Member, Planning Board
Conservation Community
Exec. Dir., Fish & Game Dept.

Term:

August 22, 2007
August 1, 2006
July 8, 2007
August 1, 2006
Indefinite
Indefinite
Indefinite
June 27, 2008
August 22, 2007
August 1, 2007
August 1, 2008
September 19, 2007
Indefinite

Members not present:

Mitchell E. Kalter
Johanna Lyons
Vacant
Vacant
Vacant

NH Fish & Game Commission
Commissioner, DRED
NH Marine Trades Association
Elected Municipal Official
Commissioner, Agr. Markets and Food

August 22, 2006
Indefinite
August 22, 2005
August 22, 2003
Indefinite

Staff Present

Jody Connor
Jacquie Colburn
Paul Currier
Darlene Forst
Laura Weit
Bobbi Benedict

Limnology Center Director, Watershed Management Bureau
Lakes Coordinator, Watershed Management Bureau
Administrator, Watershed Management Bureau
Shoreland Supervisor, Wetlands Bureau
Asst. Planner, Watershed Management Bureau
Admin. Asst., Water Division

Guests

Jared Teutsch

Policy Director, New Hampshire Lakes Association

The Meeting Was Called to Order

Dr. Haney, Chairman, called the meeting to order at 9:40 a.m.

I. Introductions/Minutes/Committee Business

1) Meeting Minutes: February 24, 2006

The Committee discussed the draft minutes of February 24, 2006.

- Page 4, line 17 - Mr. Hemmerlein clarified that the railroads are owned in fee by the state, omit "it is RFP." Omit "no money" in following sentence.

- Page 2 - Add note that Jody Pellerin left the meeting at the beginning of item II. and clarify that references to "Jody" after that point do not refer to Jody Pellerin.
- Page 4, line 2 under item 2) - Clarify MOU is Memorandum of Understanding.

K. Jordan made a motion to adopt the minutes as amended. J. Morash seconded the motion and it was unanimously voted.

2) Committee Business:

Membership: NHMTA - Ken Wilson was nominated by the New Hampshire Marine Trades Association and confirmed by the Governor & Council at its March 22, 2006 meeting.

Travel Vouchers - J. Colburn distributed travel vouchers to those members eligible for reimbursement.

Stream Gage Task Force - J. Colburn indicated that Wayne Ives, DES' Instream Flow Specialist, is in the process of coordinating the Stream Gage Task Force and a meeting is planned for late April. Joe Farrelly and Fred Murphy will represent the LMAC on the task force.

3) LMAC Meetings: 6/year with 2 lake visits

Meetings to Date: 1/27/06, 2/24/06, 3/24/06

Next Meeting: April 28, 2006

Suggestions for Lake Visits:

- Lakes with SLRs before the LMAC
- Lake Winnisquam: proposed state park, extensive exposed shoreline to railway
- Southern tier lakes: Baxter Lake in Rochester (F&G project); Cobbetts Pond in Salem (water transfer issues); Manchester's lakes which are part of the urban lake and pond renewal program (budget cuts); Massabesic Lake, Manchester.
- Wild Goose, Lake Sunapee – Proposed boat ramp site.
- Berlin area lakes: fish hatchery impacts; ATV park. Dr. Haney offered to make available canoes for the committee. Suggested aerial photos of lakes to use as a baseline
- Lakes with smaller watersheds, so the watershed can be observed in addition to the lake
- Bow Lake, Strafford

4) Future Agenda Items: April 28th Meeting

- Follow up to 3/24 meeting
- SPNHF - New Hampshire's Changing Landscape presentation
- DES, Carolyn Russell - Sprawl and Water Quality

It was suggested that SPNHF and Carolyn Russell's presentation be scheduled for the same meeting and that the presentations take place prior to a southern tier lake visit by the LMAC.

Jared Teutsch informed the committee that Don Kretchmer has resigned from the NHLA. Nancy Christie is working part-time as an administrative consultant with lake hosts and also participating in the economic value study.

*Joe Farrelly joined meeting via the phone.

II. **Surplus Land Reviews**

J. Colburn distributed copies of an editorial from the March 16, 2006 *Meredith News*, "Shoreline Handout Needs to be Stopped"; she also informed the committee that Marsha had found an identical editorial in the March 23, 2006 *Granite State News*.

1) Status of AG comments/response to CORD & LMAC/RMAC letters

J. Colburn was advised that the LMAC's request for an opinion has been referred to Attorney Allen Brooks of the Environmental Bureau of the Attorney General's Office for comment. Mr. Brooks has prepared a draft memo for review by the AG's Civil Bureau and he is awaiting their response. J. Colburn will follow up with the Civil Bureau Administrator.

2) Changes to LMAC/RMAC process

J. Colburn distributed a copy of a draft Memorandum of Agreement ("MOA") with DOT. This MOA will be the mechanism for the LMAC to work directly with DOT on surplus land requests on property which do not go through CORD. J. Colburn will request that Assistant Commissioner Walls review the document. DOT, using LMAC criteria, will determine which SLRs are forwarded to the LMAC.

K. Gallagher asked if the term "high importance" under B.7 is defined. J. Colburn indicated that this is a judgment call at this time. Every effort will be made to have a review completed within 60 days, but this section would allow the LMAC to request an extension of 30 days to complete the review if there were unique circumstances associated with an SLR.

Dr. Haney requested that DOT keep the LMAC informed of any actions taken on an SLR once the LMAC has submitted a recommendation to DOT. Mark Hemmerlein indicated that the LMAC will be copied on subsequent memos and letters regarding any SLR which the committee has reviewed. J. Colburn will add Item A.4 to the MOA to reflect this understanding and forward a revised draft to DOT. J. Morash requested that a copy of the revised draft MOA be sent to committee members via e-mail for review.

Other discussion issues:

- Develop a mechanism to transfer property to another state agency if the LMAC recommends against disposal and DOT does not want to retain it.
- Recommend to the Governor and/or the Lake Forum group that all shorefront property currently owned by the state be retained.
- Request inventory of all state-owned shorefront property from DOT.

3) SLRs - Continuation of SLR 06-001 - Lake Winnisquam in Belmont

A Checklist, a Site Visit report and a Discussion Paper were distributed by J. Colburn. The proposed lessee intends to construct an 18-slip seasonal docking structure and pedestrian crossing on the property.

J. Colburn reviewed photographs and maps with the committee. During the site visit various wildlife were encountered on the adjacent property proposed for the Sun Lake Village development. The property is intact and heavily vegetated. The following comments were made:

- A seasonal dock will require a cleared area to stockpile the material over the winter or relocate it across the property. The option of a hinged pier would require that the shoreline be excavated for placement of concrete anchor pads.
- There is no water quality data available in this area.
- Increased boat traffic will result in oil, gas and other hydrocarbons being released into the water.
- Fish & Game has documented bald eagle activity along this shoreline.
- Although the public would not be legally restricted from using the leased property, in practice public use would be limited.
- The lease is specifically to allow lessees to cross the railway. The lease stipulates that there can be no terrain alteration to the railway.

- Since this tract of land will be developed whether or not a lease is in place, it may be preferable to allow the lease to go forward so the docking facilities are coordinated and also allow the state to generate revenue from the lease.
- The shoreline should be left intact as a buffer for the planned housing development.
- This is state-owned property that left intact will help protect water quality and enhance the Shoreland Protection Act.
- Water quality data for deep spots in the vicinity shows high phosphorus levels.
- Dominant phytoplankton species observed were Aphanizomenon, Anabaena and Microcystis, which are of particular concern with a past history of cyanobacteria blooms in this lake.
- Denying a lease to the waterfront property does not have an affect on the property owner's rights to develop his property.
- PWAAB has recommended against disposal on the issue of public access.

A motion was made by F. Murphy to recommend against disposal of SLR #06-001. J. Pellerin seconded the motion and it was unanimously voted with one abstention.

4) Other Surplus Land Review - DOT 06-002: Mascoma Lake in Enfield

A Checklist and Site Visit report were distributed. The individual property owner is requesting 75' of shoreline frontage for one dock. J. Colburn explained that this is an old railroad corridor that has been turned into a recreational trail. The trail is 23 miles long between Lebanon and Danbury and passes many lakes. J. Colburn passed around a brochure of the Northern Rail Trail. The area of the SLR is primarily residential. There is another docking structure approximately 1200 feet south of this site. The SLR was initiated through DOT. CORD will not be reviewing this request and therefore PWAAB will not have an opportunity to comment. The following comments were made:

- Concern was expressed that approval of this SLR would set a precedent for future requests wherever the railroad corridor abuts shoreland.
- Opportunities for boaters to anchor near a shoreline are decreasing dramatically as undeveloped shoreland disappears.
- Mascoma Lake had serious cyanobacteria blooms in the '80s. The state used copper sulfate to treat the problem. The lake also has milfoil and Eurasian milfoil.
- Dominant phytoplankton is Anabaena, which is an indicator of potential water quality issues.
- GIS analysis indicated highly erodible soils in the adjacent area: 15-60% slope.
- Laura Weit indicated that DRED found no species of interest on the site. Laura did an in-house review and nothing was found on the site but a "buffer area" came up for both F&G (endangered or threatened animal) and the DRED - Natural Heritage Inventory (endangered or threatened plants).
- If this SLR goes forward, a condition should be added to clarify the question of whether there are threatened or endangered species present.
- It was noted that there is ample public access on Mascoma Lake.
- It is important to maintain state-owned land to protect the shoreland of the state.
- Until a state-wide shoreland policy is implemented, a seasonal dock on this property should be approved.
- It is important to apply the same standard to all SLRs. If a small tract requires a different standard than a larger tract, the LMAC should discuss criteria at a future meeting.
- Although the request is for a 5-year lease with option to renew, it is unlikely that once a dock is constructed, that there will ever be a request to have it removed. Even if a statewide policy is implemented, the lease would be grandfathered.

A motion was made by Fred Murphy to approve DOT #06-002 for a seasonal dock. J. Morash seconded the motion. The motion failed to pass with 4 in support of the motion and 5 opposed. There were no abstentions.

III. Lakes Forum & Lakes Management Criteria for NH State Agencies (Continuation of 2/24/06 meeting discussion)

J. Colburn distributed and reviewed excerpts from the Lakes Forum meeting minutes. Alice Chamberlin from the Governor's Office listed four issues raised during the Lakes Forum which should be addressed at future meetings:

- Develop a common understanding of the concept of public trust.
- Develop a handbook for public use.
- Continue work on the lakes management criteria.
- DOT create a property inventory (surplus land reviews)

Comments from committee members on the Lakes Forum:

- It is up to the LMAC to move forward with recommendations.
- There appears to be confusion between state agencies with regard to jurisdiction.
- There is a lack of vision and coordination between the state agencies.
- To effectively manage the lakes, there needs to be a coordinated procedure in place to obtain the baseline condition of the lakes and to effectively monitor them.
- Watershed issues need to be taken into consideration.
- There is typically a shortage of resources when agencies are required to take on additional responsibilities.
- A person/position, with corresponding authority to deal with policy issues, should be designated within one of the state agencies to manage all the components of lakes management and coordinate with all agencies, committees, etc.
- Public trust issues relating to surplus land reviews and lakes management need to be delineated.

J. Farrelly suggested that a subcommittee of the LMAC be appointed to provide leadership and insight for management of the state's lakes. The subcommittee would be charged as follows:

1. Create a position paper relative to the sale of state-owned properties.
2. Come back to the entire LMAC with recommendations for approval.
3. Meet with each of the Executive Councilors to make them aware of the issues.
4. Meet with the Governor to shore up support implied at the lakes forum.
5. Request an Executive Order to put a moratorium on the sale of surplus land which abuts public bodies of water until a state-wide policy is implemented.

A motion was made by J. Farrelly to establish a subcommittee to develop a position paper with regard to SLRs to bring back to the full LMAC for approval and presentation to the Governor and Executive Council. J. Morash seconded the motion and it was unanimously voted with one abstention.

Dr. Haney appointed J. Farrelly, K. Jordan and L. Sunderland to the subcommittee. It was suggested that state agency staff could be tapped as a resource for technical issues. It was also suggested that Jared Deutsch be asked to participate on the subcommittee.

Break for lunch - 12:15 p.m.

Reconvened - 12:25 p.m.

J. Colburn suggested that the lakes forum be the only item on the April 28th agenda.

IV. Lake-Related Legislation and Other Items and/or Issues**1) Lake-Related Legislation**

Jared Teutsch distributed a summary of pending lake-related legislation and discussed the bills with the LMAC.

2) Other Items and Issues

- SPA Commission:

- J. Colburn distributed copies of the New Hampshire Lakes Association "White Paper" which outlines problems and suggested solutions with regard to the SPA.
- Darlene Forst explained that the SPA Study Commission has appointed individuals/small groups to draft proposed changes which will be brought back to the full committee for discussion. The next meeting is scheduled for April 10, 2006. Some of the issues include:

- ❖ Basal area: the standard currently used is unacceptable and unenforceable. The process used in Maine is under consideration which is minimum vegetation based on a point system. There seems to be consensus that there should be a "no cut zone" immediately adjacent to all waters under the act. Behind that "no cut zone" would be the point system similar to that used by the State of Maine.
- ❖ Maximum percent impervious surface.
- ❖ Standard state-wide set back of 50'. Towns with lesser setback would no longer be able to utilize the lesser setback.
- ❖ Shoreland permit. A permit will be required but it remains to be determined if permits will be issued by the state or by the municipality with state oversight.

- In response to M. Hemmerlein's question, Darlene indicated that provision for public works projects is being considered.
- J. Teutsch suggested that Steve Kahl, Director of the Center of the Environment at Plymouth State University, make a presentation to the LMAC on impervious surfaces in relation to lakes.
- J. Colburn added that Alice Chamberlin at the Governor's Office inquired if the LMAC would be submitting a document to the SPA Commission similar to the NHLA White Paper. The RMAC is discussing preparation of a document for submission.
- D. Forst will provide a copy of the amended white paper request to J. Colburn prior to the next LMAC meeting.

- J. Colburn added that one of the three primary issues that Jim brought to the attention of the group at the lakes forum was harmful algae blooms (HABs). A meeting is scheduled for this afternoon to discuss the bloom which occurred in Lake Waukegan in November 2005. Meeting attendees will include Dr. Haney, Steve Kahl from PSU, DES staff from the Drinking Water Program and the Watershed Management Bureau, and the Meredith Town Planner – John Edgar, and the Chairman of the Waukegan Watershed Advisory Committee – Bruce Bond.

A motion was made, seconded and unanimously voted to adjourn at approximately 1:00 p.m.